

ESSB 6445 - H AMD 1260

By Representative Orcutt

WITHDRAWN 02/29/2012

1 On page 7, after line 30, insert the following:

2 "Sec. 7. RCW 90.58.140 and 2011 c 277 s 3 are each amended to
3 read as follows:

4 (1) A development shall not be undertaken on the shorelines of the
5 state unless it is consistent with the policy of this chapter and,
6 after adoption or approval, as appropriate, the applicable guidelines,
7 rules, or master program.

8 (2) A substantial development shall not be undertaken on
9 shorelines of the state without first obtaining a permit from the
10 government entity having administrative jurisdiction under this
11 chapter.

12 A permit shall be granted:

13 (a) From June 1, 1971, until such time as an applicable master
14 program has become effective, only when the development proposed is
15 consistent with: (i) The policy of RCW 90.58.020; and (ii) after
16 their adoption, the guidelines and rules of the department; and (iii)
17 so far as can be ascertained, the master program being developed for
18 the area;

19 (b) After adoption or approval, as appropriate, by the department
20 of an applicable master program, only when the development proposed is
21 consistent with the applicable master program and this chapter.

22 (3) The local government shall establish a program, consistent
23 with rules adopted by the department, for the administration and
24 enforcement of the permit system provided in this section. The
25 administration of the system so established shall be performed
26 exclusively by the local government.

27

1 (4) Except as otherwise specifically provided in subsection (11)
2 of this section, the local government shall require notification of
3 the public of all applications for permits governed by any permit
4 system established pursuant to subsection (3) of this section by
5 ensuring that notice of the application is given by at least one of
6 the following methods:

7 (a) Mailing of the notice to the latest recorded real property
8 owners as shown by the records of the county assessor within at least
9 three hundred feet of the boundary of the property upon which the
10 substantial development is proposed;

11 (b) Posting of the notice in a conspicuous manner on the property
12 upon which the project is to be constructed; or

13 (c) Any other manner deemed appropriate by local authorities to
14 accomplish the objectives of reasonable notice to adjacent landowners
15 and the public.

16 The notices shall include a statement that any person desiring to
17 submit written comments concerning an application, or desiring to
18 receive notification of the final decision concerning an application
19 as expeditiously as possible after the issuance of the decision, may
20 submit the comments or requests for decisions to the local government
21 within thirty days of the last date the notice is to be published
22 pursuant to this subsection. The local government shall forward, in a
23 timely manner following the issuance of a decision, a copy of the
24 decision to each person who submits a request for the decision.

25 If a hearing is to be held on an application, notices of such a
26 hearing shall include a statement that any person may submit oral or
27 written comments on an application at the hearing.

28 (5) The system shall include provisions to assure that
29 construction pursuant to a permit will not begin or be authorized
30 until twenty-one days from the date the permit decision was filed as
31 provided in subsection (6) of this section; or until all review
32 proceedings are terminated if the proceedings were initiated within
33 twenty-one days from the date of filing as defined in subsection (6)
34 of this section except as follows:

1 (a) In the case of any permit issued to the state of Washington,
2 department of transportation, for the construction and modification of
3 SR 90 (I-90) on or adjacent to Lake Washington, the construction may
4 begin after thirty days from the date of filing, and the permits are
5 valid until December 31, 1995;

6 (b) In the case of any permit issued to the state of Washington,
7 department of transportation, for the construction and modification of
8 the Columbia River Crossing project, the construction may begin after
9 twenty-one days from the date of filing, and the permits are valid
10 until December 31, 2030;

11 (c) Except as authorized in (b) of this subsection, construction
12 may be commenced no sooner than thirty days after the date of the
13 appeal of the board's decision is filed if a permit is granted by the
14 local government and (i) the granting of the permit is appealed to the
15 shorelines hearings board within twenty-one days of the date of
16 filing, (ii) the hearings board approves the granting of the permit by
17 the local government or approves a portion of the substantial
18 development for which the local government issued the permit, and
19 (iii) an appeal for judicial review of the hearings board decision is
20 filed pursuant to chapter 34.05 RCW. The appellant may request,
21 within ten days of the filing of the appeal with the court, a hearing
22 before the court to determine whether construction pursuant to the
23 permit approved by the hearings board or to a revised permit issued
24 pursuant to the order of the hearings board should not commence. If,
25 at the conclusion of the hearing, the court finds that construction
26 pursuant to such a permit would involve a significant, irreversible
27 damaging of the environment, the court shall prohibit the permittee
28 from commencing the construction pursuant to the approved or revised
29 permit until all review proceedings are final. Construction pursuant
30 to a permit revised at the direction of the hearings board may begin
31 only on that portion of the substantial development for which the
32 local government had originally issued the permit, and construction
33 pursuant to such a revised permit on other portions of the substantial
34 development may not begin until after all review proceedings are

1 terminated. In such a hearing before the court, the burden of proving
2 whether the construction may involve significant irreversible damage
3 to the environment and demonstrating whether such construction would
4 or would not be appropriate is on the appellant;

5 ~~((e))~~ (d) Except as authorized in (b) of this subsection, if the
6 permit is for a substantial development meeting the requirements of
7 subsection (11) of this section, construction pursuant to that permit
8 may not begin or be authorized until twenty-one days from the date the
9 permit decision was filed as provided in subsection (6) of this
10 section.

11 If a permittee begins construction pursuant to (a), (b), ~~((e))~~
12 (c) or (d) of this subsection, the construction is begun at the
13 permittee's own risk. If, as a result of judicial review, the courts
14 order the removal of any portion of the construction or the
15 restoration of any portion of the environment involved or require the
16 alteration of any portion of a substantial development constructed
17 pursuant to a permit, the permittee is barred from recovering damages
18 or costs involved in adhering to such requirements from the local
19 government that granted the permit, the hearings board, or any
20 appellant or intervener.

21 (6) Any decision on an application for a permit under the
22 authority of this section, whether it is an approval or a denial,
23 shall, concurrently with the transmittal of the ruling to the
24 applicant, be filed with the department and the attorney general.
25 This shall be accomplished by return receipt requested mail. A
26 petition for review of such a decision must be commenced within
27 twenty-one days from the date of filing of the decision.

28 (a) With regard to a permit other than a permit governed by
29 subsection (10) of this section, "date of filing" as used in this
30 section refers to the date of actual receipt by the department of the
31 local government's decision.

32 (b) With regard to a permit for a variance or a conditional use
33 governed by subsection (10) of this section, "date of filing" means
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1 the date the decision of the department is transmitted by the
2 department to the local government.

3 (c) When a local government simultaneously transmits to the
4 department its decision on a shoreline substantial development with
5 its approval of either a shoreline conditional use permit or variance,
6 or both, "date of filing" has the same meaning as defined in (b) of
7 this subsection.

8 (d) The department shall notify in writing the local government
9 and the applicant of the date of filing by telephone or electronic
10 means, followed by written communication as necessary, to ensure that
11 the applicant has received the full written decision.

12 (7) Applicants for permits under this section have the burden of
13 proving that a proposed substantial development is consistent with the
14 criteria that must be met before a permit is granted. In any review
15 of the granting or denial of an application for a permit as provided
16 in RCW 90.58.180 (1) and (2), the person requesting the review has the
17 burden of proof.

18 (8) Any permit may, after a hearing with adequate notice to the
19 permittee and the public, be rescinded by the issuing authority upon
20 the finding that a permittee has not complied with conditions of a
21 permit. If the department is of the opinion that noncompliance
22 exists, the department shall provide written notice to the local
23 government and the permittee. If the department is of the opinion
24 that the noncompliance continues to exist thirty days after the date
25 of the notice, and the local government has taken no action to rescind
26 the permit, the department may petition the hearings board for a
27 rescission of the permit upon written notice of the petition to the
28 local government and the permittee if the request by the department is
29 made to the hearings board within fifteen days of the termination of
30 the thirty-day notice to the local government.

31 (9) The holder of a certification from the governor pursuant to
32 chapter 80.50 RCW shall not be required to obtain a permit under this
33 section.

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1 (10) Any permit for a variance or a conditional use issued with
2 approval by a local government under their approved master program
3 must be submitted to the department for its approval or disapproval.

4 (11)(a) An application for a substantial development permit for a
5 limited utility extension or for the construction of a bulkhead or
6 other measures to protect a single-family residence and its
7 appurtenant structures from shoreline erosion shall be subject to the
8 following procedures:

9 (i) The public comment period under subsection (4) of this section
10 shall be twenty days. The notice provided under subsection (4) of
11 this section shall state the manner in which the public may obtain a
12 copy of the local government decision on the application no later than
13 two days following its issuance;

14 (ii) The local government shall issue its decision to grant or
15 deny the permit within twenty-one days of the last day of the comment
16 period specified in (a)(i) of this subsection; and

17 (iii) If there is an appeal of the decision to grant or deny the
18 permit to the local government legislative authority, the appeal shall
19 be finally determined by the legislative authority within thirty days.

20 (b) For purposes of this section, a limited utility extension
21 means the extension of a utility service that:

22 (i) Is categorically exempt under chapter 43.21C RCW for one or
23 more of the following: Natural gas, electricity, telephone, water, or
24 sewer;

25 (ii) Will serve an existing use in compliance with this chapter;
26 and

27 (iii) Will not extend more than twenty-five hundred linear feet
28 within the shorelines of the state."

29
30 Renumber the remaining subsections consecutively and correct any
31 internal references accordingly. Correct the title.

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EFFECT: Exempts permits issued under the shoreline management act for the Columbia River Crossing project from the automatic stay that would otherwise take effect in the event of a permit appeal to the shoreline hearing board.

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